

November 3, 2003
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IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 29300

GORDON ANDERSON and THOMAS)	
ANDERSON, individually, as Trustees of)	
the Anderson Family Trust, and as Personal)	
Representatives of the Estate of Ora Anderson,)	Boise, May 2003 Term
GORDON ANDERSON, Duly Designated)	
Trustee of the Gordon Anderson Family Trust;)	2003 Opinion No. 107
THOMAS ANDERSON, Duly Designated)	
Trustee of the Thomas Anderson Family Trust;)	Filed: November 3, 2003
RODNEY B. CURTIS, Duly Designated Trustee)	
of the Anderson Irrevocable Trust; and)	Frederick C. Lyon, Clerk
RONALD BLACKWOOD, Duly Designated)	
Trustee of the Colleen Adams Family Trust,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	
JAMES D. GLENN, JR., LLOYD WEBB,)	
RILEY BURTON and KENNETH PEDERSEN,)	
)	
Defendants-Respondents.)	
)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, for Twin Falls County. Hon. W.H. Woodland, District Judge.

The decision of the district court is affirmed.

Ellis, Brown & Sheils, Chtd., Boise, for appellants. Allen B. Ellis argued.

Holland & Hart, Boise, for respondents. Steven B. Anderson argued.

James D. Glen, Jr., Lloyd Webb, Riley Burton and Kenneth Pedersen are lawyers whose firm did work in setting up a trust for Albert and Ora Anderson. Albert and Ora Anderson hired James D. Glen, Jr. in 1978 to prepare an estate plan to remove portions of their assets from their estate to minimize estate taxes. An irrevocable trust was established and property was transferred into the trust in 1980. However, the language of

the trust instrument reserved to Albert and Ora Anderson annual trust income and the power of appointment over some of the assets. As a consequence, their estate would be responsible for estate taxes on the trust assets.

Albert Anderson died in 1983 and Ora Anderson died in 2000. Following their deaths, substantial estate taxes were levied against the trust assets, diminishing their value and preventing distribution of the assets in accordance with the expectation of the trust.

Gordon and Thomas Anderson, as trustees of the trust and personal representatives of the estate of Albert and Ora Anderson, brought this action in 1999, claiming malpractice in the establishment of the trust. Under Idaho Code section 5-219(4), an action for professional malpractice must be commenced within two years. The district court concluded that the statute of limitations was triggered in 1980 when Albert and Ora Anderson transferred property to the trust. Because, Gordon and Thomas Anderson filed a malpractice action in 1999, their case was dismissed.

The Idaho Supreme Court granted review of the appeal filed by Gordon and Thomas Anderson following a decision by the Idaho Court of Appeals. The Idaho Supreme Court was asked to determine what event triggers the commencement of the statute of limitations for a professional malpractice action. The Supreme Court ruled that the statute of limitations began to run in 1980 when Albert and Ora Anderson transferred property to the trust. They suffered damage by the loss of control of some of the property, and action could have been taken immediately to avoid the effect of the improperly drawn trust. Therefore, the malpractice action filed by Gordon and Thomas Anderson is barred by the statute of limitations.

Justice Eismann dissented.